Supreme Court, U.S.
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No. 98-1340

In the Supreme Court of the United States

OCTOBER TERM, 1998

WILLIAM COHEN, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether Bureau of Prisons decisions regarding the designation of correctional institutions for federal prisoners are entrusted to the Bureau's discretion and within the discretionary function exception of the Federal Tort Claims Act, 28 U.S.C. 2680(a).

2. Whether the court of appeals correctly held that the Bureau of Prisons, in filling out a Security Designation Form for a convicted offender, followed the guidelines in its Security Designation and Custody Classification Manual.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 5, at 1-14) is reported at 151 F.3d 1338. The opinion of the district court (Pet. App. 1, at 1-10) is unreported.

JURISDICTION

The judgment of the court of appeals (Pet. App. 6, at 1) was entered on August 26, 1998. A petition for rehearing was denied on November 20, 1998 (Pet. App. 7, at 1). The petition for a writ of certiorari was filed on February 17, 1999. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. Under 18 U.S.C. 4042(a)(2), the Bureau of Prisons (Bureau) must "provide suitable quarters and provide for the safekeeping, care, and subsistence of all persons charged with or convicted of offenses against the United States." To assist the Bureau in achieving those goals, 18 U.S.C. 3621(b) declares that, after a defendant is sentenced, the Bureau "shall designate the place of the prisoner's imprisonment. The Bureau may designate any available penal or correctional facility that meets minimum standards of health and habitability established by the Bureau, whether maintained by the Federal Government or otherwise * * * that the Bureau determines to be appropriate and suitable." The statute requires that, in making placement decisions, the Bureau consider facility resources; the nature and circumstances of the prisoner's offense; the history and characteristics of the prisoner; any statement by the court that imposed sentence; and any pertinent policy statement of the Sentencing Commission. 18 U.S.C. 3621(b).

During the time period relevant here, the Bureau carried out those statutory responsibilities through procedures set forth in Section 5100.02 of the Bureau's *Security Designation and Custody Classification Manual* (Manual). (Relevant provisions of the Manual are reproduced as an Appendix to this brief. App., *infra*, 1a-39a). The Manual directs the Bureau to obtain, after sentencing, copies of the pre-sentence report and the judgment of conviction. That information, as well as information taken from the Bureau's computer information system (SENTRY) is then used to complete a "Security Designation Form," Manual § 2, at 1 (App., *infra*, 4a); Manual § 5, at 1-2

(App., *infra*, 13a-14a), which requires various categories of information, including (among other things) the severity of the offense committed, the expected duration of incarceration, any prior commitments (*i.e.*, periods of time for which the individual was previously sentenced to confinement), any escapes or attempted escapes, the individual's history of violence, and his or her pre-commitment status. Manual § 9, at 12-18 (App., *infra*, 28a-36a). For each of those categories, the Manual provides a system for reducing qualitative information to a numerical score as well as a basic grade, typically "minor," "moderate," or "serious." The sum of the points received in each category is then used as an indicator of the level of security required for that prisoner. *Ibid.* The form also includes a line for a tentative recommended placement.

Completed Security Designation Forms are entered into the SENTRY computer system, and then forwarded to the Regional Designator, the individual charged with making the ultimate custody determination. The Regional Designator is required to consider not only the Security Designation Form and the initial placement recommendation, but also any other relevant factor, including any judicial recommendations concerning placement, the age of the offender, where the offender will live when released, questions of overcrowding and racial composition at particular institutions, the need for monitoring, whether the offender has a narcotics addiction, psychiatric evaluations, split sentences, whether the offender is an alien, the individual's medical needs, the results of any parole hearing, and whether there had been a voluntary surrender. Manual § 5, at 2 (App., *infra*, 14a-15a). For example, the Manual instructs that a sentencing court's

decision to permit an offender to surrender voluntarily ordinarily indicates that the offender should be placed in a Security Level 1 (*i.e.*, a minimum security or "camp appropriate") institution. Manual § 9, at 18 (App., *infra*, 35a).

The Manual also provides that the guiding principle of custody placement "is that every inmate should be in the lowest custody level deemed appropriate to adequately supervise that individual." Manual § 10, at 1 (App., *infra*, 37a). The Manual further states that "the intent of the Custody Classification system is to permit staff to use professional judgment within specific guidelines. Custody changes are not 'automatic' or 'mechanical' or dictated by a point total on a form." *Ibid.* Nonetheless, to the extent the Regional Designator declines to follow the recommendation on the Security Designation Form, he or she is required to document the reasons for, and inform the inmate of, that decision. *Id.* (App., *infra*, 37a-38a).

2. Petitioner was assigned to a minimum security facility in Jesup, Georgia, after his conviction for copyright infringement. On February 8, 1992, he was found injured and unconscious in the facility's television room. There were no eye witnesses to the assault. However, after an investigation, prison officials concluded that another prisoner, Humberto Garcia, had committed the assault. Garcia had no history of violence at the institution. He had been convicted of possession with intent to distribute cocaine, and his prior offenses included carrying a concealed weapon, non-violent resistance to arrest, possession of cocaine, loitering, and dealing in stolen property. Pet. App. 3, at 2.

Petitioner filed suit under the Federal Tort Claims Act (FTCA), 28 U.S.C. 2671 *et seq.*, alleging that the Bureau of Prisons had negligently placed Garcia in a

minimum security prison, and hence had failed to protect petitioner from a foreseeable assault. More specifically, petitioner contended that Garcia's Security Designation Form had not been properly filled out. Had the form properly reflected Garcia's criminal history, petitioner alleged, Garcia would have been sent to a higher security facility instead of Jesup.

The district court denied the government's motion to dismiss, holding that the suit was not barred by the FTCA's discretionary function exception, 28 U.S.C. 2680(a). "[A]s a matter of law," the court held, "the Bureau of Prisons * * * owed a non-discretionary statutory duty of safekeeping, care, and protection of [petitioner]." Pet. App. 1, at 8. In this case, the district court continued, the Bureau had breached that duty. In particular, the court concluded that the Bureau had departed from the requirements of its own Manual by failing to disclose Garcia's prior felony convictions on Garcia's Security Designation Form. If those "convictions had been entered, and Garcia's lengthy arrest record considered," the court held, "Garcia would have [been] assigned to a higher level security institution than the Jesup Camp facility." *Id.* at 9. After a bench trial, the court awarded petitioner $250,000 in compensatory damages. Pet. App. 2, at 1.

3. The court of appeals reversed. Pet. App. 5, at 14. The court ruled that, under both 18 U.S.C. 4081 and 3621, the Bureau of Prisons is given discretion over the placement of prisoners in penal institutions. "These statutory provisions," the court held, "do not mandate a specific, non-discretionary course of conduct for the [Bureau] to follow in classifying prisoners and placing them in a particular institution. Instead, they give the [Bureau] ample room for judgment." Pet. App. 5, at 9. The court further reasoned that the type of discretion

exercised by the Bureau in this context is "susceptible to policy analysis." *Id.* at 10-11. Accordingly, it held that, under cases such as *United States* v. *Gaubert*, 499 U.S. 315 (1991), the Bureau's actions in this case were within the discretionary function exception of the FTCA. Pet. App. 5, at 10-11.

The court also held that Bureau personnel in fact had followed the guidelines set forth in the Manual. While the district court had held that the Bureau's failure to include Garcia's prior felony convictions in either the Prior Commitment or History of Violence sections of Security Designation Form was error, the court of appeals concluded that the omissions were proper. In particular, because Garcia's two prior convictions "did not result in confinement, they were properly omitted from [the Prior Commitment] section. As for the History of Violence section, nothing in the Program Statement requires including in that section convictions of possession and sale of cocaine, possession of a firearm, or resisting arrest without violence." Pet. App. 5, at 13. Accordingly, the court dismissed the complaint for want of subject matter jurisdiction. *Ibid.*

ARGUMENT

The decision of the court of appeals is correct and does not conflict with any decision of this Court or any other court of appeals. Accordingly, the petition for a writ of certiorari should be denied.

1. The United States may not be sued unless Congress by statute expressly and unequivocally waives the United States' immunity to suit. See *United States* v. *Mitchell*, 463 U.S. 206, 212 (1983). The Federal Tort Claims Act (FTCA), 28 U.S.C. 2671 *et seq.*, provides a waiver of immunity for certain tort suits, but excludes various categories of claims from the scope of the

waiver. One of those exclusions is for claims "based upon the exercise or performance or the failure to exercise or perform a discretionary function or duty on the part of a federal agency or an employee of the Government, whether or not the discretion involved be abused." 28 U.S.C. 2680(a). That exclusion has come to be known as the "'discretionary function' exception." See *United States* v. *Gaubert*, 499 U.S. 315, 322 (1991).

This Court has held that a challenged decision or action falls within the discretionary function exception if, and only if, it meets two requirements. First, the challenged decision must involve an element of choice. *Gaubert*, 499 U.S. at 322. Consequently, if the challenged decision or action violates a specific, mandatory provision of a federal statute, regulation or policy, and thus does not embody a permissible exercise of judgment, it does not fall within the discretionary function exception to the FTCA's waiver. *Ibid.*; *Berkovitz* v. *United States*, 486 U.S. 531, 536 (1988). Second, the governmental decision at issue must implicate the exercise of judgment involving public policy considerations. *Gaubert*, 499 U.S. at 323. "When established governmental policy, as expressed or implied by statute, regulation, or agency guidelines, allows a Government agent to exercise discretion, it must be presumed that the agent's acts are grounded in policy when exercising that discretion." *Id.* at 324.

In this case, the court of appeals correctly held that the discretionary function exception precludes petitioner's suit. In essence, petitioner claims that the Bureau placed petitioner's assailant, Humberto Garcia, in an inappropriate facility in light of his criminal history. Congress, however, gave the Bureau great discretion in assigning individuals to correctional facilities. By statute, the Bureau may "designate any available

penal or correctional facility * * * that the Bureau determines to be appropriate and suitable" for that prisoner. 18 U.S.C. 3621(b). The statute identifies certain factors the Bureau should take into account in making placement decisions,[1] but the listing of those factors does not eliminate the Bureau's discretion or preclude it from exercising policy-based judgments. To the contrary, as the Senate Report observes, "[t]he Committee, by listing factors for the Bureau to consider in determining the appropriateness or suitability of any available facility, does not intend to restrict or limit the Bureau in the exercise of its existing discretion so long as the facility meets the minimum standards of health and habitability of the Bureau, but intends simply to set forth the appropriate factors that the Bureau should consider in making the designations." S. Rep. No. 225, 98th Cong., 1st Sess. 142 (1983).

Courts have long recognized that the authority to classify and transfer federal prisoners falls within the Bureau's broad and nearly exclusive discretion. Thus, as the Second Circuit observed (in a different context), prisoner placement "decisions are within the sole discretion of the Bureau of Prisons." *United States* v. *Williams*, 65 F.3d 301, 307 (2d Cir. 1995). See also *United States* v. *Restrepo*, 999 F.2d 640, 645 (2d Cir.) ("[t]he Bureau is given a great deal of flexibility with respect to the assignment of any prisoner to a correctional facility"), cert. denied, 510 U.S. 954 (1993); *Jones* v.

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[1] The statute directs the Bureau to consider the resources of the facility, the nature and circumstances of the offense, the history and characteristics of the prisoner, any statement of the sentencing court, any pertinent policy of the Sentencing Commission, and to show no favoritism to prisoners of higher social or economic status. 18 U.S.C. 3621(b).

United States, 534 F.2d 53, 54 (5th Cir.) ("prison officials must have broad discretion, free from judicial intervention, in classifying prisoners in terms of their custodial status"), cert. denied, 429 U.S. 978 (1976); *Leibowitz* v. *United States Dep't of Justice*, 729 F. Supp. 556, 561 (E.D. Mich. 1989) ("[t]he Bureau of Prisons enjoys almost absolute discretion over assignment, transfer, and conditions of confinement"), aff'd, 914 F.2d 256 (6th Cir. 1990), cert. denied, 499 U.S. 963 (1991). Indeed, the Manual itself explains that "the intent of the Custody Classification system is to permit staff to use professional judgment within specific guidelines. Custody changes are not 'automatic' or 'mechanical' or dictated by a point total on a form." Manual § 10, at 1 (App., *infra*, 37a). The first requirement under *Gaubert* thus is easily met.

The second *Gaubert* requirement is also easily met, for it cannot be disputed that the Bureau's decisions in this context implicate public policy. See *Procunier* v. *Martinez*, 416 U.S. 396, 404-405 (1974) (noting that the problems of prisons, which are "complex and intractable" and "require expertise, comprehensive planning, and the commitment of resources," are best left to the executive and legislative branches); *Bell* v. *Wolfish*, 441 U.S. 520, 547-548 (1979) ("[p]rison administrators * * * should be accorded wide-ranging deference in the adoption and execution of policies and practices that in their judgment are needed to preserve internal order and discipline and to maintain institutional security"). Indeed, prisoner placement decisions require prison administrators to balance numerous public policy factors, such as the risk of exposing a prisoner to more dangerous prisoners, the effect on and importance of efforts at rehabilitation, any impact on familial relations, and the costs of incarceration. As a result, the

court of appeals correctly held that the discretionary function exception applies here and barred petitioner's claim.[2]

2. Petitioner's assertion (Pet. 9-11) that the court of appeals' decision in this case conflicts with this Court's decision in *FDIC* v. *Meyer*, 510 U.S. 471 (1994), and the Sixth Circuit's decision in *Federal Express Corp.* v. *United States Postal Service*, 151 F.3d 536 (1998), is without merit. Those cases hold that, even where the FTCA does not waive immunity, a federal cause of action might be permitted to proceed against a federal agency or instrumentality *if* Congress has waived that entity's immunity to suit through a sue-and-be-sued clause. See *Meyer*, 510 U.S. at 480-483 (because claim "is not cognizable" under the FTCA, "we must determine whether FSLIC's sue-and-be-sued clause waives sovereign immunity for the claim"); *Federal Express*, 151 F.3d at 539 (FTCA does not preclude suits based on federal law against agency if statute provides that agency can "sue and be sued" in its own name, "because

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[2] Petitioner argues (Pet. 14-15) that the government waived any challenge to the district court's "finding" that the Bureau does not exercise policy judgment by failing to challenge it in the court of appeals. That case-specific contention does not warrant a grant of certiorari, and in any event is incorrect. The government raised the discretionary function exception on appeal, and with it the question whether Bureau decisions involve the sort of policy judgment to which that exception applies. Gov't C.A. Opening Br. 20-29; Gov't C.A. Reply Br. 11-25. In any event, the immunity of the United States cannot be altered through a lawyer's omissions; it can be waived only by an Act of Congress. See, *e.g.*, *Munro* v. *United States*, 303 U.S. 36, 41 (1938); *Finn* v. *United States*, 123 U.S. 227, 232-233 (1887); see also *Block* v. *North Dakota*, 461 U.S. 273, 280 (1983). As a result, even if the government had failed to raise an immunity issue, it would not be error for the court of appeals to address the issue.

Congress's inclusion of a 'sue or be sued' clause in an agency's authorizing legislation creates a *presumption* of abandonment of public immunity."). See generally *Franchise Tax Bd.* v. *United States Postal Serv.*, 467 U.S. 512, 520 (1984) (explaining that, by including a sue-and-be-sued clause in an instrumentality's authorizing legislation, Congress "launche[s] [the instrumentality] into the commercial world," making its amenability to suit and its "liability" largely "the same as that of any other business."). Because Congress has not waived the United States' or the Bureau's immunity through a sue-and-be-sued clause, petitioner's reliance on *Meyer* and *Federal Express* is misplaced.[3]

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[3] In a footnote (Pet. 9 n.17), petitioner attempts to equate "the inherent power" of the Attorney General to sue on behalf of and to defend suits against the United States with a sue-and-be-sued clause. That effort fails. Waivers of sovereign immunity must be unequivocally expressed in the text of a federal statute, and petitioner cites no statutory language waiving the government's immunity through a sue-and-be-sued clause or otherwise. See *United States* v. *Nordic Village, Inc.*, 503 U.S. 30, 34 (1992); *United States* v. *Mottaz*, 476 U.S. 834, 841 (1986);*United States* v. *Sherwood*, 312 U.S. 584, 590 (1941). Moreover, the authority of the Attorney General to represent the United States in litigation—which is not "inherent" but rather is expressly granted by 28 U.S.C. 515-519—does not in any way suggest that the immunity of the United States has been waived. To the contrary, one of the defenses the Attorney General can raise when defending actions against the United States is sovereign immunity. See, *e.g.*, *Department of the Army* v. *Blue Fox*, 119 S. Ct. 687 (1999). In any event, petitioner cites nothing that even remotely suggests that Congress, by permitting the Attorney General to represent the interests of the United States in litigation, intended to "launch[]" the entire government "into the commercial world" for purposes of monetary liability, as it often does with respect to individual instrumentalities when it inserts a sue-and-be-sued clause into their authorizing legislation. *Franchise Tax Bd.*, 467 U.S. at 520.

Petitioner's claim (Pet. 13-14) that the court of appeals' decision conflicts with *Jones* v. *United States*, 91 F.3d 623 (3d Cir. 1996), *Flechsig* v. *United States*, 991 F.2d 300 (6th Cir. 1993), *Cline* v. *Herman*, 601 F.2d 374 (8th Cir. 1979), and *Brown* v. *United States*, 486 F.2d 284 (8th Cir. 1973), is similarly without basis. Neither *Jones*, *Flechsig*, nor *Cline* even mentions the discretionary function exception to the FTCA, and certainly none addresses whether it precludes suits based on improper prisoner placements. See Pet. App. 5, at 7 (distinguishing *Jones* on that basis). And *Brown*, far from supporting petitioner's view, expressly recognizes that, on remand, "plaintiff's cause of action under the Federal Tort Claims Act is confronted by a very serious obstacle in the form of the discretionary function exception." 486 F.2d at 289.

3. Petitioner also argues that the discretionary function exception does not apply here because the Bureau violated non-discretionary duties. See Pet. 9, 11, 13. The argument lacks merit.

a. Petitioner first appears to argue that, because 18 U.S.C. 4042 uses mandatory language—it states that the Bureau "shall * * * provide for the safekeeping, care and subsistence of" prisoners—the Bureau has a non-discretionary duty to ensure prisoner safety, and that such duty is breached any time a prisoner is injured. See Pet. 9, 11, 13; see *Gaubert*, 499 U.S. at 322 (to fall within discretionary function exception, challenged decision must be "discretionary" in nature, that is, "involv[e] an element of choice" or "embody a permissible exercise of judgment"). Section 4042 may provide a non-discretionary duty to "provide for" prisoner safety, *i.e.*, to make provisions for and to take precautions toward prisoner security, which the Bureau undeniably did. It does not, however, impose a duty to

guarantee prisoner safety through an error-proof system, as petitioner appears to contend. Nor does it eliminate the Bureau's discretion in determining how to go about making such provision. See Pet. App. 5, at 8 ("The Seventh Circuit reasoned persuasively that [w]hile it is true that [§ 4042] sets forth a mandatory duty * * *, it does not, however, direct the manner by which the [Bureau] must fulfill this duty.") (quoting *Calderon* v. *United States*, 123 F.3d 947, 950 (7th Cir. 1997) (internal quotation marks omitted)). And it is precisely the exercise of that discretion that petitioner challenges here. Petitioner does not contend that the Bureau made *no* provisions for his safety. Instead, he claims that the Bureau erred in deciding to place a particular prisoner in a minimum security prison. A claim that the government should have put greater restraints on an individual's liberty is not a promising candidate for exemption from the discretionary function exception. And, for the reasons explained above, see pp. 7-10, *supra*, prisoner placement is the sort of inherently discretionary and policy-based decision that falls within the scope of the discretionary function exception of the FTCA.

b. Petitioner's alternative claim (Pet. 16-17) that the Bureau breached non-discretionary duties by failing to follow the Manual in designating his assailant (Garcia) is both fact-bound and meritless. While petitioner contends that Garcia would not have been sent to a minimum security prison if Garcia's prior arrests and convictions had been listed on the Security Designation Form in either the Prior Commitments or the History of Violence sections, *ibid.*, the court of appeals correctly concluded that neither of Garcia's two prior arrests was suitable for inclusion in those sections, Pet. App. 5, at 12-13. Garcia's arrest of January 12, 1979, for posses-

sion and sale of cocaine, did not result in confinement (the judgment was "adjudication withheld" and a $500.00 fine, Pet. App. 9, at 6); and his arrest of July 26, 1983, for carrying a concealed firearm, possession of cocaine and "resisting arrest without violence," likewise did not result in a prison sentence, Pet. App. 9, at 6-7. Because "[c]ommitment is defined as any time for which the individual has been sentenced to confinement," Manual § 9, at 13 (App., *infra*, 30a), neither arrest was appropriate for inclusion in the history of commitment section. Pet. App. 5, at 13. Similarly, because neither the January 12, 1979, arrest nor the July 26, 1983, arrest was for violence—the arresting police department specifically described the latter as involving "resisting arrest without violence"—those offenses were properly excluded from the history of violence section as well. *Ibid.*

Moreover, Garcia's criminal background was expressly noted in the "Remarks" section of the Security Designation Form, which referred to Garcia's "extensive arrest record [without] prior commitments," and to the fact that Garcia's arrests were for possession of a machine gun, carrying a concealed weapon, and assault on a police officer. App., *infra*, 39a. The form counseled that once Garcia reached the institution where he was placed, that institution's staff should carefully review Garcia's record to determine if an appropriate placement had been made. See *id.* at 40a. The Security Designation and Classification Form, therefore, made a full disclosure of Garcia's background and even invited the authorities to re-evaluate Garcia once he arrived at the chosen institution. Because there was no omission on the form, there was no failure to follow the Manual's guidelines.

In any event, under the Manual, a court's decision to permit an offender to surrender voluntarily after conviction normally indicates that the offender should be placed in a Security Level 1 institution such as Jesup. Manual § 9, at 9 (App., *infra*, 24a). In this case, the sentencing court permitted Garcia to surrender voluntarily. For that reason too incarcerating Garcia in a minimum security facility was consistent with the Manual.[4]

4. Finally, petitioner asserts that the court of appeals erred in failing to remand for a determination as to whether the district court's judgment could be sustained under a theory of "constitutional tort." Pet. 16. That argument is incorrect. Even setting aside petitioner's admission that he failed to include such a claim in his complaint (and did not amend his complaint to include it after he became represented by counsel),

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[4] Even if petitioner were correct in his claim that an error of omission occurred in filling out the Security Designation Form, the record demonstrates that any such error did not proximately cause the injuries petitioner suffered. It is not disputed that the Security Designation Form itself instructed officials at Jesup to review Garcia's suitability for that penal institution upon his arrival, declaring "Institution staff; carefully review for S/L 1 appropriateness." (App., *infra*, 40a); that Garcia's qualifications were reviewed upon his arrival at Jesup, resulting in a finding that he was suitable for placement there (Tr. 137-138); that Garcia's suitability for Jesup was periodically reviewed, and he was found to be properly placed at that institution (Tr. 164); that Garcia had no history of violence at Jesup that would have alerted prison authorities there to a problem (Tr. 16); and that petitioner by his own admission never had any problem with Garcia prior to the assault, or any reason to complain to prison staff about Garcia (Tr. 88-89). Clearly then, even if some error occurred in filling out the Security Designation Form (and the court of appeals correctly found none), it was not the proximate cause of petitioner's injury.

ibid., any such remand would have been futile because liability for "constitutional torts" runs against individual officers and not against the government; it thus could not support the judgment against the United States entered by the district court. See *Bivens* v. *Six Unknown Named Agents of the Fed. Bureau of Narcotics*, 403 U.S. 388, 396-397 (1971); *Meyer*, 510 U.S. at 484-486 (declining to "expand the category of defendants against whom *Bivens*-type actions may be brought to include not only federal *agents*, but federal *agencies* as well.").[5]

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[5] Alternatively, petitioner argues that the court of appeals should have remanded for inquiry into Garcia's status as an alien; aliens, he contends, cannot be assigned to "SL-1" facilities but instead must be assigned to facilities designated as "SL1-Out." Pet. 17. Petitioner, however, abandoned that theory at trial—in light of documentation indicating that Garcia is a United States citizen, Tr. 160-161, 165—and the theory is based on a misunderstanding of the system in any event. SL-1 through SL-6 designate the security level of the facility, while "Maximum," "In," "Out" and "Community" designate the level of custody for the individual; "Out" indicates that the individual is eligible for less secure housing within an institution and for work detail outside the perimeter of the institution. Compare Manual § 2, at 1 (describing the "six Security Levels" for institutions) (App., *infra*, 4a) with *id.* § 3, at 1-2 (describing the "four custody levels" for individuals) (App., *infra*, 6a-8a). The Manual makes it clear that deportable aliens, and other individuals whose custody level is designated as "Out," may be placed in Security Level 1 ("SL-1" or minimum security) facilities. Manual § 5, at 4 ("Placement [of a deportable alien] can be made in an SL-1 facility with Regional Director approval provided such placement is consistent with the inmate's security requirements.") (App., *infra*, 17a); *id.* § 9, at 9 (similar) (App., *infra*, 24a); see also *id.* § 10, at 1 (App., *infra*, 37a).

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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APRIL 1999

APPENDIX A

SECURITY DESIGNATION AND CLASSIFICATION MANUAL

U.S. Department of Justice
Federal Prison System

Washington, D.C. 20534

OPI:	CORR
Number:	5100.2
Date:	October 7, 1982
Subject:	SECURITY DESIGNATION AND CLASSIFICATION SYSTEM

Program Statement

EFFECTIVE DATE: December 1, 1982

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1. PURPOSE. To transmit a new manual of policy and instructions for designating (and redesignating) institutions according to Security Level and for assigning Custody Classifications.

2. DIRECTIVE RESCINDED. P.S. 5100.1, *Designation (Security) and Custody Classification System.*

3. DIRECTIVES REFERENCED.

   a. P.S. 5070.1, (1/16/75), *Report on Sentenced Offenders by United States District Judges, Form 235.*

   b. P.S. 5070.3, (1/02/79), *Study and Observation Cases and Competency Commitments, Title 18,*

U.S. Code 4205(c), 5010(e), 5037, 4244 and 4246.

c. P.S. 5270.5, (8/12/82), *Inmate Discipline.*

d. P.S. 7300.5, (1/15/82), *Community Programs Managers Manual.*

e. P.S. 5180.2, (5/14/82), *Central Inmate Monitoring System*

f. P.S. 5251.3, (7/13/82), *Youth Corrections Act Institutions and Programs*

g. P.S. 5010.1, (8/28/74), *Designation of State Institutions for Service of Federal Sentences*

h. P.S. 5140.14, (1/8/80), *Juvenile Delinquents/Juvenile Justice & Delinquency Prevention Act of 1974*

4. BACKGROUND. A task force was established in January 1977 by the Executive Staff to study the Federal Prison System's inmate classification procedures. The findings of the task force revealed classification inconsistencies and a need to develop a system which would ensure appropriate designations, as well as a method of assigning custody levels that would place an inmate in the least restrictive environment which would provide appropriate control. The first Manual was issued in February 1979, and in July 1980, the entire Manual was reissued. Since then, there have been other page changes.

   The intent of the Security Designation and Custody Classification System is for staff to use professional

judgment within specific guidelines. While the system is flexible, it provides a basis for more consistent decision-making across the Federal Prison System.

5. ACTION. Designations and Custody Classifications shall be made in accordance with the guidelines in this Manual.

/s/ NORMAN A. CARLSON
NORMAN A. CARLSON
Director

INTRODUCTION

Institutions in the Federal Bureau of Prisons are grouped into six Security Levels and an Administrative category (for which non-security considerations outweigh security concerns). Seven factors are evaluated to determine an institution's Security Level: 1) perimeter security; 2) towers; 3) external patrol; 4) detection devices; 5) security of housing areas; 6) type of living quarters; and 7) level of staffing per population size.

Designation of an institution for receipt of a particular inmate involves two steps: a) completion of a Security Designation Form, which specifies the security needs of the incoming offender; and b) consideration by the Regional Designator of several management variables: age, Central Inmate Monitoring assignment, release residence, judicial recommendation, degree of overcrowding, racial balance, sentence limitations, and additional considerations.

The designation system is designed to keep the inmate population of the Federal Bureau of Prisons in balance, decrease the number of transfers for custody purposes, reduce the number of inmates who request placement in Administrative Detention for their own protection, eliminate preferential "transfer arrangements" between institutions, and aid the Bureau's administrators in making better use of available resources.

Initial designations are accomplished by the respective Regional Designator with input from local Community Programs Managers. Likewise, subsequent re-designations (transfers) are accomplished by the Regional Designator based on institutional evaluation of the inmate's case. The Custody Classification form may recommend a change to a different appropriate security level for an inmate based on a point total and the relationship between both pre- and post-commitment variables.

Designations of non-federal facilities are completed by a Community Programs Manager, after appropriate consultation with the respective Regional Designator. A Security Designation Form is not required on cases so designated; i.e., all juvenile commitments, many short-termers, and some females.

Four custody levels are established: MAXIMUM, IN, OUT, and COMMUNITY. In order to place an inmate in the lowest appropriate custody classification, the system assigns points to a six post-commitment variables. The sum of those points (relative to the inmate's security level) offers a guideline for custody assignment changes.

The intent of this process is for staff to use professional judgment within specific guidelines. The system was designed to emphasize staff flexibility in decision-making, yet provide a basis for more consistent decision-making across the Federal Bureau of Prisons.

As part of an on-going effort to monitor and evaluate the security needs of the Bureau of Prisons, periodic reports focusing on Designation and Custody Classification, Escapes and Disciplinary actions, are maintained on a regular basis (Appendix A).

DEFINITIONS

1. ADMINISTRATIVE INSTITUTIONS. Facilities to which inmates are assigned based on factors other than security (for example, medical needs).

2. CLASSIFICATION. The systematic subdivision of inmates into groups based upon their security and program needs.

3. CUSTODY CLASSIFICATION. The degree of staff supervision required for an individual inmate. (See Appendix D for escort instructions.)

   A. MAXIMUM. Inmate requires maximum control and supervision. This classification is for individuals who, by their behavior, have identified themselves as assaultive, predacious, riotous, serious escape risks, or seriously disruptive to the orderly running of an institution.

      These individuals may be restricted from some work and cell assignments, as well as from parts of the institution (e.g., tunnels), as deemed appropriate by the Warden, for security reasons. (This differs from Control Unit status, since those individuals cannot be let out of their individual cells without staff escort.) At least two staff members are required for escorted trips of a routine or emergency nature outside the institution, and handcuffs with the C&S Handcuff Cover, Martin chains, and leg irons will be

used at all times for these individuals. Authority for such trips requires the Warden's approval. An inmate in MAXIMUM custody may not be placed in an outside hospital under contract guard supervision; supervision shall be provided only by experienced Federal Bureau of Prisons employees.

B. IN. Inmate is assigned to regular quarters and is eligible for all regular work assignments and activities under normal level of supervision but *not* for work details or programs outside the institution's secure perimeter. Two staff members are to be used for escorted trips of a routine or emergency nature outside the institution, and handcuffs with Martin Chains will be used at all times; other restraint equipment may be used at the discretion of the escorting officers. The Warden may permit an illegal alien in IN custody to be escorted by *one* staff member.

C. OUT. Inmate may be assigned to less secure housing and is eligible for work details outside the institution's perimeter with a minimum of two-hour intermittent staff supervision. For escorted trips, of a routine or emergency nature outside of the institution, restraints may be used at the discretion of the escorting officer.

[§ 3, p. 2]

D. COMMUNITY. Inmate is eligible for the least secure housing, including any which is outside the institution's perimeter, may work on outside details with minimal super-

vision, and is eligible for community-based program activities. These individuals may travel on routine or emergency trips outside of the institution without escort (in furlough status) or may be escorted without restraints.

4. MANAGEMENT VARIABLES. Considerations which in addition to security considerations, may significantly affect a designation or redesignation decision:

   A. Judicial Recommendation. Through the use of Form AO 235 and/or the Judgment and Commitment papers, a court may recommend a specific institution or program for an offender.

   B. Age. An offender's age may be the determining factor in certain placements. For example, Leavenworth would not be appropriate for most 20-year old inmates. This management variable is to be used only when age is the determining factor in making the placement.

   C. Release Residence Area. It is the policy of the Federal Bureau of Prisons to place each inmate in an institution that is appropriate in security level and is geographically as close to the anticipated release area as is possible and reasonable.

   D. Overcrowding. The Assistant Director, Correctional Programs Division, sets and adjusts institutions' Operational Capacities in order to accommodate overcrowding and balance population.

E. Racial Balance. It is the Federal Bureau of Prison's intent that one racial group should not be assigned disproportionately to one particular work detail or to one housing unit. Attention must also be given to the racial balance maintained across institutions. Therefore, Designators need to be aware of the proportion of inmates in each racial group at institutions and attempt to keep those proportions in balance.

F. Central Inmate Monitoring Assignment. Pursuant to Program Statement 5180.2, those individuals who, for specified reasons, need to be monitored or separated from others are assigned accordingly.

G. Designation Limitations.

(1) Misdemeanants. An inmate convicted of an offense for which the maximum penalty is one year or less may not be transferred to a Security Level 5 or 6 facility without first signing a waiver. A sample of the waiver form is at the end of Section 12.

[§ 3, p.3] (2) Narcotic Addiction Rehabilitation Act (NARA). Preference is given for a NARA commitment to remain in the originally designated institution to complete the specialized drug abuse program. * * *

(3) Youth Corrections Act (YCA). An offender sentenced under 18 USC Section 5010(b), 5010(c), 3401(g), or 5010(e), may be designated only to an

institution specifically designated as a YCA institution or otherwise in compliance with special procedures regarding YCA inmates.

* * * * *

(4) Study Case. An offender sentenced under 18 USC 4205(c) or 5010(e) will be placed for study at the nearest appropriately staffed and secure facility. (See later references regarding the specific type of case to be placed.)

(5) An inmate serving a split sentence under 18 USC, Section 3651, may be confined only "in a jail-type or treatment institution" and may not be transferred to a Security Level 5 or 6 facility unless serving a concurrent adult felony sentence.

(6) Psychiatric. An inmate who has a current history or is presently exhibiting psychiatric problems which indicate the need for an initial designation to a Psychiatric Referral Center.

(7) Medical. Documented information which reflects that the inmate is in need of medical or surgical inpatient treatment in a Medical Referral Center.

H. Additional Considerations. Constraints may be placed on a designation because of:

(1) Medical Health (NOT requiring an initial designation to a Medical Referral Center)

(2) Mental Health (NOT requiring an initial designation to a Psychiatric Referral Center)

(3) Aggressive Sexual Behavior

(4) Deportable Alien

[§ 3, p. 4] (5) Threats to Governments Officials

(6) Greatest Severity Offense

(7) High Severity Drug Offense

(8) Racketeer Influenced and Corrupt Organizations or Continuing Criminal Enterprise

(D) Disruptive Group

I. Parole Hearing. Sometimes it is necessary to place an inmate at a particular institution temporarily in order to have a parole hearing within certain time limits. * * *

J. Voluntary Surrender. If the Court permitted the offender, after conviction and sentencing, to voluntarily surrender to the U.S. Marshal or to the designated institution, with or without financial obligation, the Designator shall normally designate a Security Level 1 institution. If there is reason to believe that an SL-1 institution is not appropriate, the Regional Director or designee

shall designate a higher security Level institution, as is appropriate, using the Security Point Total as a guide.

5. SECURITY LEVEL. One of six categories of facilities, based on structural restraints variables. (See Section 4.)

6. DESIGNATION. An order from the Regional Office, Central Office or Community Programs Manager (CPM) indicating the initial facility of confinement for an inmate.

7. SECONDARY DESIGNATION. Designation of an institution to which an inmate is to be moved after completion of some treatment, program, or process.

8. REDESIGNATION. An order from the Regional Office, Central Office or CPM indicating an institution to which an inmate is to be transferred.

9. TRANSFER. The movement of an inmate from one facility to another.

10. PRIOR COMMITMENT. A sentence of confinement for any length of time but served previous to the present sentence.

11. HISTORY. The individual's entire background of criminal convictions, including findings by an Institution Discipline Committee, but excluding the current offense.

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Section 5
Page 1
5100.2 CN-8
August, 1, 1985

SECURITY DESIGNATION PROCEDURES
(NEW COMMITMENTS)

No more than 72 hours should pass from the time the U.S. Marshall requests a designation until the Regional Designator renders a designation. Generally, Community Programs Mangers should use no more than 48 hours and the Regional Office no more than 24 hours. The following is the normal chronology of a designation:

1. Offender is sentenced.
2. Clerk of Court sends Judgment and Commitment ("J&C") papers to Marshal.
3. Marshal assigns an eight-digit register number, Marshal requests, via teletype, designation from appropriate Community Programs Manager (CPM). A copy of the designation request is also routed to the USM Prisoner Transportation Division (PTD) in Kansas City.
4. CPM contacts U.S. Probation Office for two copies of Pre-Sentence Report, requests a copy of the Judgment and Commitment papers from Marshal, and from the gathered data, determines whether a non-federal facility should be designated (after appropriate consultation with Regional Designator).
   * * *
5. If it is determined that a designation to a non-federal facility is to be made, the procedure outlined in Section 7, Designations to Non-Federal Facilities, is followed.

6. CPM uses SENTRY to determine if special CIM precautions need to be taken. This includes a name search to determine if the offender was previously confined under a current or previous register number. If new to the Federal Bureau of Prisons, the inmate must be loaded into SENTRY and "admitted" to the CPM "facility" with any appropriate CIM assignments entered.

7. If designation is to be made to a federal institution, the CPM completes the Security Designation Form and enters it into SENTRY. This operation generates an automatic notification to the Regional Office that a designation is needed. CPM then "releases" the inmate from the CPM "facility."

[§ 5, p. 2]

8. Regional Designator checks SENTRY movement (DST) daily log to find out which inmates are awaiting designation.

   Based on the BP-14 information entered in SENTRY by the CPM, the Regional Designator determines whether the designation should be based solely on Security Level or on one or more of the following overriding Management Reasons:

   Management Reasons

   A. Judicial recommendation

   B. Age

   C. Release residence

   D. Overcrowding

   E. Racial balance

   F. Central Inmate Monitoring Assignment

G. Designation limitations

(1) Misdemeanor sentence

(2) Narcotic Addict Rehabilitation Act sentence

(3) Youth Corrections Act sentence

(4) Sentenced and unsentenced study case

(5) Split sentence (18-3651)

(6) Psychiatric

(7) Medical

H. Additional considerations

(1) Medical Health

(2) Mental Health

(3) Aggressive Sexual Behavior

(4) Deportable Alien

(5) Threats to Government Officials

(6) Greatest Severity Offense

(7) High Severity Drug Offense

(8) Racketeer Influenced and Corrupt Organizations or Continuing Criminal Enterprise

(9) Disruptive Group

I. Parole Hearing

J. Voluntary Surrender

[§ 5, p. 3]

9. SENTRY provides information on the capacities and inmate populations in each institution, as do Reports 70-51A and 70.51B on "Federal Prisoners Confined." That information is used by Regional Desig-

nations and others as a guide for population management.

10. Regional Designator designates an institution, notes the Management Reasons applied, if any, and specifies the source of any CIMS documentation used.

11. When the Regional Designator notes that the CPM has marked Items 6 and/or 7 of the Designation Limitations Section of the BP-14, or when there is other substantive information, the Designator will normally consult with the RAM for the appropriateness of a medical/psychiatric Referral Center Designation. * * *

* * * * *

12. CPM checks DST logs daily for designations. When a designation is made, CPM sends all supporting documents to the designated institution.

13. U.S. Marshals Prisoner Transportation Division in Kansas City uses SENTRY daily log to determine the designation made and will schedule delivery of the inmate to the designated facility.

[§ 5, p. 4]

14. Within ten days of notification of the designation, the institution reviews designation information in SENTRY and immediately reports any apparent errors to the Regional Designator who made the designation, if the changed Security Total would indicate a different Security Level. If a designation is changed, the Regional Designator shall assure that the orginating CPM and Prisoner Transportation Division, Kansas City, Missouri, are informed of the change and the reason for the change.

15. Institution contacts designating CPM if the inmate has not arrived within 120 days of the designation date. * * *

16. EXCEPTIONS. (See NOTE at bottom of Page 5)

    A. If the inmate is a juvenile or "short-termer," a Security Designation Form is not required and the CPM may designate a federal or contract facility. * * *

    B. Sentenced Study Cases. The CPM shall complete a Security Designation Form and enter it into SENTRY. The Regional Designator shall designate an appropriate institution for the study. * * *

    C. Deportable Alien. If a Designator determines that a contract jail is not appropriate for a deportable alien and that BOP institution is indicated, the alien will be designated to an institution which is commensurate with his security needs, but no lower than an SL-2 facility. Placement can be made in an SL-1 facility with Regional Director approval provided such placement is consistent with the inmate's security requirements.

    D. District of Columbia Superior Court Designations are made only by the Central Office. The Federal Bureau of Prisons cooperates with the D.C. Superior Court by assisting in the management of inmates for whom resources may not be available within the D.C. Department of Corrections.

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Section 9
Page 1
5100.2 CN-8
August 1, 1985

SECURITY DESIGNATION FORM INSTRUCTIONS*
IDENTIFYING DATA INMATE LOAD DATA:

1. Register Number: Enter the identifying number, assigned by the U.S. Marshal at the time of inmate designation to an institution for this charge/offense, regardless of the method of commitment.

* * * * *

2. Last Name: The length is 1-24 spaces. The first character must be a letter. Each character after the first, if entered, must be a letter, space, hyphen, or apostrophe. The name used should be the name under which the person is committed.
3. First Name: The length is 1-12 spaces. Same edit as last name.
4. Middle: The length is 1-8 spaces. If entered, edit same as last name.
5. Suffix: The length is 1-3 spaces. If entered, must be valid code found in Name Suffix Table 7 SENTRY Codes.
6. Race: Enter appropriate code:

* * * * *

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* Security Designation Form BP-14, Inmate Load Data Section only the name and register number are required if the inmate record has been previously created (Reference Inmate Load Transaction, SENTRY Manual).

7. Ethnic Orgin: Enter the appropriate code:

* * * * *

8. Sex: Enter either:

   M = Male
   F = Female

9. Date of Birth: The length is 10 spaces.

   - MM-DD-YYYY format

* * * * *

10. Offense/Charge/Sentence: Enter the Offense(s). Enter the length of sentence, e.g., "5 years," or "2 years, 6 months."

11. FBI Number: The length is 1-9 spaces.

* * * * *

12. Height: FT-the values must be 1 thru 9 and represent feet. IN-the values must be 00 thru 11 and represent inches.

13. Weight: Must be values 001-999 and represent pounds.

14. Social Security Number: The length is 9 spaces.

* * * * *

15. Eyes: The length is 2 spaces. If entered, must be valid code found in eye color code table 18 SENTRY codes.

16. Hair: The length is 2 spaces. If entered, must be valid code found in hair color table 19 SENTRY codes.

17. State of Birth: The length is 2 spaces. If entered, must be valid code found in state possession SENTRY code table 5.

[§ 9, p. 4]

18. Or Country of Birth: If entered, must be valid code found in Country Code Table 6; Cannot be "US"; and cannot be entered if state of birth entered.

19. Citizenship: Enter Country of which inmate is a citizen must be a valid code found in country code table 6 SENTRY manual.

20. Address - Street: The length is 1-28 spaces. * * *

21. Address - City: The length is 1-15 spaces. * * *

22. Address - State: The length is 2 spaces. If entered, must be valid state code found in state/ possession code table 5, SENTRY.

23. Zip Code: The length is 5 spaces. If entered, state address must be entered.

24. Or Foreign Country: The length is 2 spaces. * * *

25. Remarks: The length is 1-62 spaces. Any combination of alphanumeric characters.

    NOTE: (Instructions to U.S. Marshals about special requirements of an offender shall be included here. For example, critical health problems, history of suicide attempts.

SECURITY DESIGNATION DATA:

1. Designation Limitations: Enter the appropriate codes identifying 1-3 of the following types of sentences that would require a management designation:

Code	Item	Definition
0	None	No sentence limitation
1	Misdemeanor	A misdemeanant is an individual committed for an offense for which the maximum penalty that can be imposed is one year or less. An individual with this type of sentence cannot be confined in a penitentiary (SL-5 or S-6) without a waiver.
[§ 9, p. 5] * * *		Assignment to a Metropolitan Correctional Center or detention facility does not require a waiver.
2	Narcotic Addict	Individuals sentenced under this Act must be confined at an institution with a Drug Abuse Program, including those sentenced for a 4252 study.

3	Youth Corrections Act	An offender sentenced under 18 USC Section 5010(b), 5010(c), 3401(g), or 5010(e) may be placed only at an institution specifically designated as a YCA institution or otherwise in compliance with special procedures regarding YCA inmates.
4	Study Cases	Prior to implementation of a final sentence, United States Courts may commit individuals for periods of study and observation under Title 18 USC, Section 4205(c) or 5010(c). Study cases are normally assigned by the Regional Office unless there are Designation Limitations of medical or psychiatric conditions. * * *
5	Split Sentence	An inmate serving a split sentence may be confined only in an SL-1 through SL-4 institution. An inmate serving an adult concurrent sentence may be considered for other types of institutions.

[§ 9, p. 11]

6	Psychiatric	Community Programs Managers will be responsible for reviewing and evaluating available information to determine whether the inmate requires mental health evaluation and/or treatment in a psychiatric referral center. * * *

* * * * *

7	Medical	When reviewing and gathering information pertaining to an initial designation, the Community Programs Manager (CPM) must attempt to ascertain whether an inmate requires medical or surgical inpatient treatment in a medical referral center. * * *

* * * * *

2. Additional Considerations: Enter the appropriate code number reflecting 1-5 of the following factors that may result in a management designation. Additionally, Items A thru E may also be considered when making a designation decision. However, these items are not "loaded" at the time of designation because they have been previously entered into the data system. Note that these items are not mutually exclusive; that is, one or more codes may be appropriate. The variable should be written out in full in the Remarks Section.

Code	Item	Comments
0	None	None
1	Medical Health	If the individual has medical problems that should be taken into consideration in the designation process, but does not require an initial designation to a medical referral center, the CPM should mark this section. * * *

[§ 9, p. 9]

2	Mental Health	If there is information in the individual's background which reflects previous mental health problems that need to be considered in the designation process, but does not require an initial designation to a psychiatric referral ceter, the CPM will mark this item * * *
3	Aggressive Sexual Behavior	If an individual has a history of, or is committed for, a crime involving aggressive sexual behavior, an SL-1 facility on a military base cannot be designated. Other SL-1 institutions are not necessarily precluded, although cautious judgment must be applied when considering any SL-1 institution or a co-correctional institution.
4	Deportable Alien	An offender with a detainer for deportation or the probability of receiving one. A deportable alien is to be designated to an institution which is commensurate with his security needs, but not lower than an SL-2 facility. Placement can be made in a Security Level 1 facility with Regional Director approval provided such placement is consistent with the inmate's security requirements.

5	Threats to Government Officials	Offenders convicted of violence to government officials cannot be assigned to any SL-1 facility, unless approved by the Regional Director or designee. (These cases will be referred for CIMS assignment.)

[§ 9, p. 10]

6	Greatest Severity Offense	An offender committed for an offense in the Greatest Severity category may not be initially placed in an institution lower than SL-3, unless approved by the Regional Director or designee.
7	High Severity Drug Offense	An offender committed for a drug Drug offense in the High Severity category and is considered to be a leader or prime motivator of a organized and sophisicated criminal operation, may not be initially placed in an institution lower than SL-2, unless approved by the Regional Director or designee.
8	Racketeer Influenced and Corrupt Organizations or Continuing Criminal Enterprise	An inmate sentenced under 18 USC 1961 or 21 USC 848, may not be placed in an institution lower than SL-2 for at least the first year of commitment, unless approved by the Regional Director or designee, and must be referred as CIM case.
D	Disruptive Group	Any inmate confirmed as a Member of a disruptive group as

outlined in P.S. 5180.2, Central Inmate Monitoring System, may not be designated or redesignated to an institution lower than SL-4, unless approved by the Regional Director or designee. The Designator will consult with the Regional Correctional Services Administrator prior to any move ment.

3. *USM Office*: Enter the location of the USM office. e.g., Detroit.

4. *Judge*: Enter the Sentencing Judge's last name.

5. Recommended Facility: Enter the name of the institution recommended. Through the use of Form AO 235 and/or the Judgement and Commitment papers, the court may recommend a specific institution or program for newly committed offenders. If it is within the security group for which the individual properly qualifies, every effort shall be made to assign the inmate to the indicated facility within the security group.

[§ 9, p. 11]

* * * * *

6. Recommended Program: Enter the program recommended in the Judicial Documents, if any. If a program is available within the security group for which the individual properly qualifies, every effort shall be made to assign the inmate to the indicated facility which offers the program within the security group.

* * * * *

NOTE: Only one number can be assigned for the following items. Points cannot be added.

7. Type of Detainer: Enter the appropriate number of points in the box in the right-hand column to reflect detainer status. Refer to the Severity of Offense Scale, Section 17. Assign and enter highest number of points appropriate. Determination is based on the nature of the charge of the most serious detainer:

   (a) If it is a pending charge, points based on the documented behavior are assigned ONLY on the Detainer Item (Security Designations Data, Item #7 on BP-14);

   (b) If it is an adjudicated sentence AND that sentence is absorbed within the federal sentence for which the inmate is currently incarcerated, the documented information is used in the appropriate "history" item—either History of Escape or History of Violence; or

   (c) If it is an adjudicated sentence AND that sentence is not absorbed within the federal sentence for which the inmate is currently incarcerated, this material should be considered as a detainer and treated as described in (a).

   If law enforcement officials indicate a firm intent to lodge a detainer, treat it as lodged. Treat a state sentence as a detainer only if it is expected that the sentence will exceed the federal sentence. Otherwise, treat the state sentence as a "history" item as indicated in (b) above.

[§ 9, p. 12]

POINTS	DETAINER
0	None
1	Lowest and Low Moderate Severity
3	Moderate Severity
5	High Severity
7	Greatest Severity

Example: Individual with two detainers for Violation of Firearms Act (Moderate Level) and one for Extortion (High), use High = 5 points and enter "5" in box in right-hand column.

8. Severity of Current Offense: Enter the appropriate number of points in the box in the right-hand column to reflect the severity of the documented offense behavior of the most severe of the offenses for which the individual was sentenced on this period of incarceration. Severity is determined by using the Severity of Offense Scale (Section 17). Do not use this same information to assign points on the history items (#11 and #12). If offense involves drugs, use Drug Enforcement Administration list in Section 16 on "Street Values of Drugs" to convert pounds or kilos to dollar value.

POINTS	SEVERITY
0	Lowest
1	Low Moderate
3	Moderate
5	High
7	Greatest

Example: For example, if (according to the Pre-Sentence Report) the individual was involved in an

Armed Robbery of a Bank (which would fall in the Greatest category on the Severity of Offense Scale) but plead guilty to a simple Robbery offense (which would be in the High category) assign the points on the basis of the more severe, documented behavior, i.e., assign 7 points. DO NOT USE THIS SAME INFORMATION TO ASSIGN POINTS ON THE HISTORY ITEMS (#11 and #12).

NOTE: ANY CASE SCORING IN THE GREATEST CATEGORY (7 points) WILL BE INITIALLY DESIGNATED TO A SL-3 OR HIGHER INSTITUTION (or Administrative Facility). ANY CASE SCORING IN THE HIGH CATEGORY FOR A DRUG OFFENSE WILL BE INITIALLY DESIGNATED TO AN SL-2 OR ABOVE FACILITY.

9. EXPECTED Length of Incarceration: Enter the appropriate code reflecting the expected length of incarceration in the right-hand column. IN ADDITION, ENTER TO LEFT OF COLUMN THE ACTUAL NUMBER OF MONTHS TO WHICH THE INMATE WAS SENTENCED. The code is completed by using the Expected Length [§ 9, p. 13] of Incarceration Scale in Appendix E. If the inmate is sentencing under YCA or NARA, the second column, "(YCA)", is used. If the inmate's sentence is less than the number of months shown in the table, use the length of sentence.

POINTS	EXPECTED LENGTH
0	0 - 12 Months
1	13 - 59 Months
3	60 - 83 Months
5	84 Plus Months

Example: An Adult convicted of Breaking and Entry (48 Months in Appendix E) and sentenced to 8 years: Enter "1" in the box in the right-hand column and to the left of the column write "96". If the inmate had received only a two year sentence, 24 months would be the expected length of incarceration: Enter "1" in the box and "24" to the left of the column.

NOTE: Life sentence equals 45 years or 540 months = 5 points. Be sure to aggregate consecutive federal sentences.

10. Type of Prior Commitments: In the right-hand column, enter the appropriate number of points reflecting category of prior commitment history. This is determined by the kind of prior institution experience during the inmate's criminal career and is based on the nature of the most severe offense, Section 17, which resulted in commitment. Commitment is defined as any time for which the individual has been sentenced to confinement. MINOR = Lowest and Low Moderate offense which resulted in incarceration. SERIOUS = all offenses in the Moderate, High, and Greatest categories which resulted in incarceration. See Severity of Offense Scale, Section 17. Documented information from juvenile adjudications can be used, unless the record has been expunged.

POINTS	TYPE
0	None
1	Minor
3	Serious

Example: If an individual has a previous incarceration for a crime which falls in the High category on

the Severity of Offense Scale, such a prior incarceration would be considered Serious = 3 points. Enter "3" in the box in the right-hand column.

[§ 9, p. 14]

11. History of Escape or Attempts: Enter the appropriate number of points in the right-hand column to reflect the escape history of the individual. History includes the individual's entire background of escapes or attempts to escape from confinement, excluding the current offense. Escapes or attempted escapes are to be recognized if the inmate was found to have committed the prohibited act of the escape or attempt by an Institutional Discipline Committee regardless of the prosecution and conviction status of the case. State disciplinary findings shall be used. Also, consideration is given to behavior relating to a prior offense, (such as flight to avoid prosecution). DO NOT use behavior related to current offense for this item. If there were more than one escape attempt, use most severe. Failure to appear for traffic (automobile) violations, and runaways from foster homes are not to be considered. The length of time begins with the date of documented occurrence. Documented information from juvenile adjudication can be used, unless the record has been expunged. Indian Tribal Court convictions are misdemeanors and therefore "minor."

* * * * *

[§ 9, p. 16]

12. History of Violence: Enter the number of points reflecting the appropriate category in the right-hand column. History of violence includes the individual's entire background of criminal violence,

excluding current offense. However, Institution Discipline Committee findings of commission of the prohibited act are to be recognized regardless of prosecution and conviction status, if known. State disciplinary findings shall also be used. DO NOT use behavior related to current offense for this item. Severity of violence is defined according to the degree of seriousness of the act which resulted in a conviction or finding of guilt. If there is more than one incident of violence, the most serious is used to determine severity. The length of time begins with the date of conviction. Documented information from juvenile adjudication can be used, unless the record has been expunged. Indian Tribal Court convictions are misdemeanors and therefore "minor."

POINTS	HISTORY	DEFINITION
0	None	No violence
1	>10 Minor	Acts occurring more than ten years ago involving persons or property which resulted in convictions (e.g., simple assault, fights, domestic squabbles)
2	5-10 Minor	Acts occurring more than five but less than ten years ago involving persons or property which resulted in convictions (e.g., simple assault, fights, domestic squabbles)

3	<5 Minor	Acts occurring within the last five years involving persons or property which resulted in convictions (e.g., simple assault, fights, domestic squabbles)
4	>15 Serious	Acts occurring more than fifteen years ago involving persons or property which resulted in conviction (e.g., aggregated assault, intimidation involving a weapon, incidents involving arson or explosives, etc.)

[§ 9, p. 17]

5	10-15 Serious	Acts occurring more than ten but less than fifteen years ago involving persons or property which resulted in conviction (e.g., aggravated assault, intimidation involving a weapon, incidents involving explosives, etc.)
6	5-10 Serious	Acts occurring more than five but less than ten years ago involving persons or property which resulted in conviction (e.g., aggravated as-

		sault, incidents involving arson or explosives, etc.
7	<5 Serious	Acts occurring within the last five years involving persons or property which resulted in convictions (e.g., aggravated assault, incidents involving arson or explosives, etc.)

Example: If an individual has a history of being fined for drunken fights—12 years ago—this would rate as >10 Minor, and "1" would be entered in the right-hand column.

13. Pre-Commitment Status: Refers to person's status preceding, during, and following trial period. Enter the appropriate number of points.

POINTS	PRE-COMMITMENT STATUS	DEFINITION
0	Not Applicable	Individual was not on own recognizance and did not voluntarily surrender.
-3	Own Recognizance	Individual was released prior to (or during) the trial period without posting bail or incurring any other financial obligation to ensure appearance. Ignore if there is any sign of bail violation, failure to appear etc.

[§ 9, p. 18]

-6	Voluntary Surrender	Individual was not escorted by a law office or to the place of confinement. Ignore if violated or not successfully completed.

***NOTE*: If the Court permitted the offender, after conviction and sentencing, to voluntarily surrender to the U.S. Marshal or to the designated institution, with or without financial obligation, the Designator shall normally designate a Security Level 1 institution. If there is reason to believe that an SL-1 institution is not appropriate, the Regional Director or designee shall designate a higher Security Level institution, as is appropriate, using the Security Point Total as a guide. (If placement is at an SL-1 institution because of the Voluntary Surrender, Management Reason "10—Voluntary Surrender" should be noted on the BP-14.**

When a Court does not establish a surrender date, CPM will contact the Court to establish a date. This must be included in the CPM's designation request. The Regional Designator shall check on all voluntary surrender cases to ensure that a reporting date has been set.

14. If eligible for SL-1, is there any medical reason that would preclude designating a camp? Some types of Security Level 1 facilities (e.g., independent camps, etc.) are not equipped to treat individuals with acute medical and dental problems; therefore, the Regional Designator requires this information in

order to make a proper designation. (Also, see this Section, Page 5).

Y = Yes N = No

15. Remarks: Enter any relevant information not already recorded that may have an impact on the designation process or the transportation of the inmate. (See Section 5, Page 1).

* * * * *

CUSTODY CLASSIFICATION
INTRODUCTION

When a newly committed offender arrives at the designated institution, the individual is automatically assigned a custody level:

Security Level of Designated Institution	Inmate's Initial Custody Level
SL-1	OUT
SL-2, SL-3, SL-4, SL-5	IN
SL-6	MAX
Administrative Facility	IN (Except for SL-1 offenders who are assigned OUT)

All subsequent custody level changes require the completion of a Custody Classification Form. These custody reviews will be made by the Unit Team in accord with the established custody review time schedule (See Section 11, Page 15).

The guiding principle is that every inmate should be in the lowest custody level deemed appropriate to adequately supervise that individual. It should be clearly understood that the Custody Classification Form only recommends, and the Team decides. As stated in Section 2, the intent of the Custody Classification system is to permit staff to use professional judgment within specific guidelines. Custody changes are not "automatic" or "mechanical" or dictated by a point total on a form. In every instance, if the Team decides not to

follow the recommendation of the Form BP-15, the Team must document its reasons and inform the inmate concerning the decision.

APPENDIX B

SECURITY DESIGNATION FORM FOR HUMBERTO GARCIA

SECURITY/DESIGNATION DATA

SERA4 600.00 09-12-1995

PAGE 001 OF 001 11:09:12

REGNO: 41734-004

NAME: GARCIA, HUMBERTO ORG: CFL

SEX/AGE: W/M/36 FORM D/T: 11-28-1990/1404

RES: MIAMI, FL 33187

OFFN/CHG: POSS. WITD COCAINE/63 MONTHS

CUSTODY: BIL: D/LIMITS: NONE

AD/CONSID: NONE

CIM CONSID:

JUDGE:	KING	REC RACL:
DETAINER:	NONE	SEVERITY: MODERATE
PRIOR:	NONE	ESCAPES. : NONE
PRECOMMT:	VOL SURR	V/S DATE: 01-09-1991
EXC CAMP:	NO	SEC TOT..: 0

USM: MIAMI

REC PROG:

LENGTH: 13-59 MOS (063)

VIOLENCE: NONE

V/S LOC: INSTI.

SEC LEV: S1

CCM RMKS: EXTENSIVE ARREST RECORD W/O PRIOR COMMITMENTS TO INCLUDE POSS. MACHINE GUN, CARRYING CONC. F/A, AND ASSLT. ON POL. OFC.

FACL DESIG:	JESUP FCI SAT CAMP
DESIGNATOR:	SER JAP DATE: 11-29-1990
DESIGN REAS:	MGMT MGMT: OTHER INFORMATION
SEN:	N/A
DESIG RMKS:	INSTITUTION STAFF; CAREFULLY REVIEW FOR S/L 1 APPROPRIATNESS

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